

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

BETSY DeVOS, in her official capacity as
Secretary of the United States Department of
Education; and the UNITED STATES
DEPARTMENT OF EDUCATION, a federal
agency.

Defendants.

Case No. C20-01119-BJR

DEFENDANTS' MOTION FOR
EXTENSION OF TIME TO RESPOND TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

COMES NOW Defendants, by and through their counsel, Brian T. Moran, United States Attorney for the Western District of Washington, and Kristin B. Johnson, Assistant United States Attorney for said District, pursuant to Local Civil Rule 7(j), and this Court's Standing Order For All Civil Cases (Dkt. 15), and hereby respectfully requests that the Court extend the deadline for Defendants to respond to Plaintiff's Motion for Preliminary Injunction an additional two weeks, until August 13, 2020, consistent with the Court's Standing Order For All Civil Cases, and reset the oral argument.

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CERTIFICATION OF CONFERRAL

Pursuant to the Court's Standing Order For All Civil Cases, Defendants certify that they conferred with Plaintiff's counsel on July 27, 2020, regarding Defendants' Motion for Extension of Time to Respond to Plaintiff's Motion for Preliminary Injunction. Plaintiff's counsel declined to agree to Defendants' requested extension until August 13, 2020, but will consent to an extension of Defendants' response to a deadline of Monday at 10:00 a.m.

FACTS

Plaintiff filed a Complaint for Declaratory and Injunctive Relief on July 20, 2020, seeking to challenge action taken by the U.S. Department of Education ("DOE") under the Administrative Procedures Act ("APA"). Dkt. 1. On July 23, 2020, Plaintiff filed a Motion for Preliminary Injunction seeking to enjoin Defendants from implementing or enforcing the challenged DOE action. Dkt. 8-13. Plaintiff noted the motion for consideration on August 14, 2020 pursuant to Local Civil Rule 7(d)(3) (motions seeking a preliminary injunction shall be noted for consideration on a date no earlier than the fourth Friday after filing and service of the motion). Dkt. 8.

Plaintiff served the Motion for Preliminary Injunction on the United States Attorney's Office at 4:33 p.m. on July 23, 2020. Due to the heightened possibility of unrest in the Seattle area, employees of the United States Attorney's Office were not allowed to access the Seattle courthouse building beginning at 8:00 a.m. on July 24, 2020 through 8:00 a.m. on July 27, 2020. The undersigned did not receive a copy of Plaintiff's Motion for Preliminary Injunction until this morning, July 27, 2020.

On July 24, 2020, this Court issued a Standing Order For All Civil Cases. Dkt. 15. The Court also issued a Minute Order directing Defendants to respond to Plaintiff's Motion for

1 Preliminary Injunction no later than Thursday, July 30, 2020, and scheduling oral argument for
2 10:00am PST on Tuesday, August 4, 2020. Dkt. 16.

3 **AUTHORITY**

4 Pursuant to Local Civil Rule 7(j) motions for relief from a deadline should, whenever
5 possible, be filed sufficiently in advance of the deadline to allow the court to rule on the motion
6 prior to the deadline. LCR 7(j). Pursuant to this Court's Standing Order For All Civil Cases:

7 Motions for extensions of time are discouraged and will be granted only where
8 good cause is clearly evident. Accordingly, parties should not expect the Court
9 to grant extensions even if they are unopposed, absent the necessary showing.
Press of business in other matters ordinarily does not evidence good cause.

10 Motions for extensions of time should be filed at least three (3) business days in
11 advance of the expiration of the relevant deadline. Any opposition must be filed
within two (2) business days of the motion. Untimely motions or responsive
pleadings may be summarily denied, stricken, or ignored.

12 Dkt. 15, pg. 3.

13 Also pursuant to this Court's Standing Order For All Civil Cases:

14 The Court does not use noting dates for motions; parties SHALL NOT set noting
15 dates when filing a motion. Instead, any opposition to a motion shall be filed no
16 later than TWENTY-ONE (21) days after a motion is filed. Any reply in support
of a motion shall be filed no later than FOURTEEN (14) days after an opposition
has been filed. These deadlines apply to all motions.

17 Dkt. 15, pg. 2.

18 **ARGUMENT**

19 Defendants respectfully request that the Court extend the deadline for Defendants to
20 respond to Plaintiff's Motion for Preliminary Injunction to August 13, 2020, consistent with the
21 deadlines contemplated for all motions in the Court's Standing Order For All Civil Cases, and
22 reset the oral argument. Due to the late service of the motion, and the closure of the U.S.
23 Attorney's Office, the undersigned did not receive the motion until this morning. Defendants
24

1 are unable to prepare a thorough response to the 35-page Motion for Preliminary Injunction in
2 just four days' time.

3 Plaintiff's complaint seeks to challenge an interim final rule issued by DOE. The U.S.
4 Attorney's Office will need to coordinate with the DOE and the Department of Justice's Civil
5 Division on this case. Indeed, there are two other lawsuits challenging the same DOE action
6 currently pending in other districts. *See State of Michigan, et. al. v. Betsy DeVos, et. al.*, 20-
7 4478-JD, District Court for the Northern District of California; *NAACP, et. al. v. Elizabeth*
8 *DeVos, et. al.*, 20-1996-DLF, District Court for the District of Columbia.

9 Notably, Plaintiff did not bring a motion for a temporary restraining order under Local
10 Civil Rule 65(b) alleging immediate and irreparable injury, loss, or damage. Rather, Plaintiff
11 seeks to obtain a preliminary injunction under the Ninth Circuit's irreparable harm standard and
12 appropriately noted the motion for consideration on August 14, 2020, under Local Civil Rule
13 7(d)(3), prior to this case being reassigned. Dkt. 8, pg. 16. There is no request before the Court
14 to schedule Plaintiff's motion on an expedited briefing schedule.

15 Defendants would like to present the Court with accurate and comprehensive
16 information and analysis regarding DOE's actions to assist it in ruling on Plaintiff's Motion for
17 Preliminary Injunction. However, based on the nature of the allegations in the complaint, as
18 well as the timing of service of the motion, Defendants need additional time to do so.

19 WHEREFORE good cause exists to extend the deadline and Defendants respectfully
20 request that the Court extend the deadline for Defendants to respond to Plaintiff's motion for
21 preliminary injunction an additional two weeks, until August 13, 2020, consistent with the
22 Court's Standing Order For All Civil Cases, and reset the oral argument.

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1 RESPECTFULLY SUBMITTED this 27th day of July, 2020.

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3 Respectfully submitted,

4 BRIAN T. MORAN
United States Attorney

5 s/ Kristin B. Johnson
KRISTIN B. JOHNSON, WSBA #28189
6 Assistant United States Attorney
United States Attorney's Office
7 700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
8 Phone: 206-553-7970
Fax: 206-553-4067
9 E-mail: kristin.b.johnson@usdoj.gov
Attorney for Defendants